

**MADISON COUNTY PLANNING BOARD  
MEETING MINUTES  
AUGUST 25, 2008**

**I. Call to Order**

The meeting was called to order by President Ann Schwend at 6:05 p.m.

**II. Roll Call**

**BOARD MEMBERS PRESENT:** Ann Schwend, John Lounsbury, Pat Bradley, Dorothy Davis, Kathy Looney, Lane Adamson, Laurie Schmidt, Eileen Pearce, Ed Ruppel, and Dave Maddison (as of 6:35pm).

**BOARD MEMBERS ABSENT:** Don Loyd.

**STAFF MEMBERS PRESENT:** Charity Fechter and Jim Jarvis

**STAFF MEMBERS ABSENT:** Jim Jarvis

**OTHERS PRESENT:** Troy White, Rocky Hermonson, Art Hoffart

**III. Minutes of the July 28, 2008 meeting**

CORRECTIONS: None

<p><b>MOTION: To approve the minutes of the July 28, 2008 meeting as presented. Moved by Ed Ruppel. Seconded by Dorothy Davis. Motion passed unanimously.</b></p>
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**IV. President's Comments**

There were no comments.

**V. Opportunity for Public Comment**

There was no public comment.

**VI. Public Hearing**

There were no public hearing items

**VII. Preliminary Plat**

**A. Bear Creek Estates Minor Subdivision - Preliminary Plat (Revised)**

**Proposed:** Bear Creek Estates Preliminary Plat – Minor Subdivision

**Landowner:** Rocky Hermonson, Art Hoffart, Troy White  
c/o SBC Investments, LLC  
PO Box 1921  
West Yellowstone, MT 59758

**Consulting** Stahly Engineering and Associates

**Engineers:** 7585 Shedhorn Drive  
Bozeman, MT 59718

**Proposal:** Subdivide 243 acres into 4 lots of 45.985 to 69.290 acres each. Modifications to the original conditions of approval are proposed.

**Location:** Along Bear Creek Loop in, approximately 4.5 miles southeast of Cameron and 15 miles southeast of Ennis

**Legal Description:** Section 33, Township 7 South, Range 1 East, PMM

**Commission District:** 1 – Jim Hart

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## **BACKGROUND**

This property was originally proposed as a 12-lot residential subdivision in May 2006. A revised preliminary plat application was submitted in October 2006 for 8 residential lots of 20-25 acres each and 3 common areas totaling 75 acres. On January 29, 2007, the Planning Board recommended denial of the application. The Board of County Commissioners approved the application with conditions on March 6, 2007. A copy of the preliminary plat approval by the Commissioners is attached.

Marc Lenart and William Ramsay brought action against the County for its approval. A settlement agreement has been reached that effectively revises the preliminary plat to make it a 4-lot minor subdivision, with all lots having frontage on Bear Creek. A copy of that agreement is attached. The agreement includes proposed changes to the original conditions of approval. Given the circumstances, including all but one of the adjacent landowners being party to the original suit and having waived the notification requirement for a preliminary plat application, starting with a brand new application for a minor subdivision was deemed unnecessary.

The Planning Board is being asked to review the proposed subdivision and comment on the modified conditions.

## **RECENT PUBLIC and AGENCY COMMENTS**

The applicant sent the revised plats with a request for comment to the commenting agencies. As noted in the Settlement Agreement, the adjacent landowners waived any notification requirement. A public hearing is not required as it is a 4-lot minor subdivision.

## **PLANNING BOARD MEETING – AUGUST 25, 2008**

Staff presented the revisions and the settlement agreement to the Planning Board. The applicant had made a verbal request for consideration of an alternate access to Lot 4 (south of Bear Creek) from a road to be built by property owners to the south. Staff noted that two conditions (#15 and #18) needed to be modified based on additional information received since the staff report was originally prepared. A proposed building envelope plan that would place the proposed 10-acre building areas next to the creek buffers was received just before the meeting.

## **Applicant Comments**

Rocky Hermanson, representing SBC Investments, noted that the alternate access would place the Bear Creek crossing at a much better location than was proposed with their subdivision as the creek at that point is in a more defined channel.

## Comments/Questions from the Board

- How does the developer feel about putting in a 30,000 gallon water storage facility or will they put in a 10,000 gallon cistern and sprinkler the residential buildings? *They had been surprised by the requirement for the sprinkler system and had planned on a 10,000 gallon cistern. Most likely they would go with the cistern and then require the residential structures be equipped with sprinklers.*
- The building envelope plan does not show any building envelopes near the road; they are all next to the stream buffer. *The lot owner would have to request a building envelope change if they wanted to be closer to the road.*
- In a discussion with Mark Petroni, former Forest Service District Ranger, indicated this was a better proposal but that it still adversely affected the wildlife corridor.
- It appears that some of the side creeks run through the building envelopes, which would reduce the actual building area that could be used. *That is correct.*
- What will happen to the teepee ring identified in the cultural resources report? Where is it in relation to the “no-build” area near the buffer? *If it isn’t entirely within the 150’ foot stream buffer it is right on the edge.*
- The teepee ring should be shown as a “no-build” area on the plat.
- Crossing accessibility has been a problem. The proposed stream crossing location is problematic. *The stream crossing at the alternate location on the south would be much better all around.*
- The wildlife corridor is still an issue. The proposed building envelopes are not consistent with the wildlife experts who recommended that the houses be placed closer to the road. The piecemeal approach to development erodes the wildlife corridor.
- The developers have presented a proposal more in keeping with the Planning Board’s recommendations and shouldn’t be beat up for it.
- Any development in the area will have impacts. There still seem to be more negative impacts associated with this than not.
- The Findings of Fact made by the Commissioners on Item F, Wildlife and Wildlife Habitat is wrong. The studies and reports submitted to the Planning Board addressed the specific area and they did identify wildlife impacts.
- Instead of designating the building envelopes, why not designate “no-build” areas and then allow each lot owner to decide where to put their 5-acre building envelope?

## PROPOSED FINDINGS OF FACT

*(The following findings of fact begin with the findings made by the Madison County Board of Commissioners on the 8-lot preliminary plat. Proposed findings on the 4-lot minor subdivision are shown in **bold italics**).*

The preliminary plat and supplements have been reviewed to determine whether the proposed subdivision complies with the Montana Subdivision and Platting Act, Madison County Subdivision Regulations, and Madison County Comprehensive Plan/Growth Policy.

In accordance with state law, the Planning Office proposes the following Findings of Fact based on the local government review criteria as set forth in Section 76-3-608, MCA and the County Subdivision Regulations.

A. Application Completeness – The application is complete. ***No change to finding.***

B. Effects on Agriculture – Modest negative but an acceptable impact. ***No change to finding.***

C. Effects on Agricultural Water User Facilities – No negative impact. ***No change to finding.***

D. Effects on Local Services – ***Acceptable impact. (Commissioner findings were not stated).***

E. Effects on the Natural Environment – The negative impact of the subdivision on the natural environment pertain mainly to the cutting of roads, driveways, and utility routes through the property. The proposed bridge would, with proper engineering and environmental precautions, likely meet the permitting tests. The developers have decreased the amount of road from 5.2 acres to 4.4. acres. The Planning Board recommends that the lot numbers be reduced from 8 to 4 and the home sites be relocated from along the creek closer to the County Road, thereby minimizing the disturbance to vegetation. The county Commissioners also recognize that they cannot unreasonably restrict a landowner's ability to develop his property. The County commissioners recognize that the developer has reduced his proposed subdivision from 12 lots to 8 lots, thereby mitigating the amount of roads, utility extension and bridges (reduced from 2 bridges to 1 bridge). Also, the proposed building envelopes sit above the historic Bear Creek channels, and the developer has set their building setback requirements at 150 feet from the high water mark of the creek, further than the 100 foot recommended distance from the creek. Although there will be some negative impact to the natural environment, the developer has reasonably mitigated that impact and we find that said impact to the natural environment is an acceptable one. ***The proposed 4-lot subdivision is consistent with recommendations made by wildlife experts and the Planning Board. The roadways have been reduced by 2.5 acres, and 4 driveway and access easements have been removed. The 150' stream setback buffer remains, supported by covenants restricting construction (including fences) in the buffer area. Impacts are acceptable.***

F. Effects on Wildlife and Wildlife Habitat – Little or no negative impact. The reports relied upon by the Planning Board made general references to the entire valley. There were no reports addressing wildlife and wildlife habitat impact specific to this particular area. Those same reports indicate little if any impact on wildlife in an area. In fact, the setbacks and lack of fencing actually enhance the wildlife corridor along the creek. ***The reconfiguration to 4 lots is consistent with recommendations made by the wildlife experts. The covenants include a prohibition of fencing in the stream buffer area. Impacts are acceptable.***

G. Effects on Public Health and Safety – There would be little or no negative impact on public health and safety. ***No change to finding.***

H. Effect on Other Resources in the County – The Planning Board expressed concern regarding current development density and the impact this subdivision would have in the Bear Creek area. The proposed development plans 1 home/30 acres, while the current developed Bear Creek area, outside the proposed development, has 1 home/123 acres. Looked at in other numbers, however,

the entire approximately 5 sections of the immediate Bear Creek area, including the proposed development and prior to actually having any home on that development, currently has 1 home/133 acres. When those 8 homes are built, the entire 5 sections will then have 1 home/100 acres. Are the 8 homes in 243 acres more densely grouped than the rest of the Bear Creek area? Possibly. Collectively, do the 8 homes adversely affect the area? Arguably. For example, some homes to the southeast of the development are equally densely grouped and some built even closer to the creek. Is that area enough of an example to approved this development? Again, that is arguable and I encourage future cooperation and collaboration, since future developers will surely use this development as a model for how they proceed. Nevertheless, the impact on this criteria is considered to be an acceptable one. ***The revised 4-lot subdivision is in keeping with recommendations made by the Planning Board. The density change in the 5-section area would change from 1 home/123 acres to 1 home/106 acres. Impacts are acceptable.***

I. Effects on the Local Economy – Positive impact. ***No change to finding.***

J. Effects on Public Services Provided by Other Entities in the County – No negative impact. ***No change to finding.***

K. Legal and Physical Access – Continue to work with the planning board, commissioners and the Bear Creek Area Land Use Planners to further reduce the impact of the access road. ***The revised layout removes the internal access road, “Little Bear Loop.” Two access points are proposed to the County road, Bear Creek Loop. The only internal access road remaining in common with the originally approved plat is the access road to a single lot on the south side of Bear Creek. Impacts are acceptable.***

L. Parkland Dedication – Not applicable. ***The proposed minor subdivision would create lots larger than five acres in size, so a parkland dedication is not required. Not applicable.***

M. Substantial Compliance with the Comprehensive Plan/Growth Policy – The proposed subdivision is in substantial compliance with the Comprehensive Plan/Growth Policy. ***No change to findings.***

Conclusion: ***With conditions, the proposed Bear Creek Estates Minor Subdivision will:***  
***(1) be in compliance with all applicable rules and regulations;***  
***(2) have an acceptable impact on each of the six public interest criteria, plus other resources in the County, the local economy, and public services provided by other entities in the County; and***  
***(3) be in substantial compliance with the County Comprehensive Plan/Growth Policy and the Madison Valley Growth Management Action Plan.***

#### **STAFF AND PLANNING BOARD RECOMMENDATIONS**

Based on the staff analysis, previous actions and findings by the Planning Board and Commissioners, the proposed settlement agreement, proposed Findings of Fact, and discussion by the Planning Board on August 25, 2008, the Madison County Planning Board and staff recommend **approval** of the Bear Creek Estates preliminary plat for a 4-lot minor subdivision, subject to the following conditions, with the legal authority for each condition noted in italics.

<b>MOTION: To amend the conditions of approval #13, #17 and #18 and add a note to the subdivider. Moved by Dave Maddison, seconded by Ed Ruppel. Motion carried unanimously.</b>
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The conditions of approval were then discussed and amendments made as follows:

Modify Condition #15 as follows: Prior to final plat approval, ~~an underground cistern or other system~~ a 30,000 gallon water storage facility for fire suppression shall be installed as recommended by and in accordance with Madison Valley RFD specifications. A 10,000 gallon cistern would be acceptable if fire suppression sprinkler systems are utilized in the dwellings constructed in this subdivision. Any culverts and bridges installed to serve this subdivision must have the capacity to handle fully loaded fire apparatus. *IV-A 14(c), MCSR; Section 76-3-608, MCA*

Modify Condition #17 as follows: Each lot shall have a designated ~~“buildable zone” of ten acres, of which only five acres~~ five-acre building envelope where may be utilized as the actual building envelope to construct structures or improvements may be made outside of the “no-build” areas that include the archeologically designated sites and the stream buffer. The face of the plat shall reference the requirement that a building envelope plan must be submitted to the Madison County Planning Office for review and approval prior to constructing any structures or improvements on a lot. *II-E 2 and IV-A 6, MCSR; Section 76-3-608 MCA.*

Modify Condition #18 to read as follows: The final plat shall show a 150-foot building setback line / stream buffer ~~from each bank of~~ from the centerline of Bear Creek designated as a “no-build” area. *IV-A 3 and IV-B 1, MCSR; Section 76-3-608 MCA.*

Add new “Note to Subdivider”: An alternate access to from the south to replace the access drive and bridge crossing from the north ~~would be acceptable~~ is preferred, provided that there is a recorded easement agreement, it is acceptable to the Madison Valley Rural Fire District, the bridge has the capacity to handle fully loaded fire apparatus, and the access road meets Madison County road standards.

<b>MAIN MOTION: To recommend approval of Bear Creek Estate Minor Subdivision with conditions. Moved by Dave Maddison, seconded by Ed Ruppel. Motion carried with a vote of 6 ayes and 3 nays.</b>
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***[Standard conditions]***

1. Any and all adopted State and County requirements and standards which apply to this proposed subdivision must be met unless otherwise waived for cause by the governing body. *II-H and Chapter IV, MCSR 9/2006*
2. A notarized declaration of “Right to Farm” and “Emergency Services Information” (Appendix R of 2006 Madison County Subdivision Regulations) must be filed with the final plat. *II-H.2 and II-H.4. (a)-(c) MCSR 9/2006; 76-3-611 MCA*
3. The final plat must be accompanied by a certification by a licensed title abstractor showing the owners of record, the names of any lienholders or claimants of record against the land, and the written consent to the subdivision from any lienholders or claimants of record against the land. *II-G(c) and Appendix K, MCSR 9/2006; 76-3-612, MCA*
4. All subdivision road and utility easements (or rights-of-way) shall be clearly shown and labeled on the final plat. The active ditch easement shall have a minimum width of 15’ from each side of the centerline, or, in this case on the north side, to the point where the north boundary adjoins the County road right-of-way. If the ditch remnant is part of a recorded ditch, a second easement must be shown on the final plat; or documentation that the ditch

has been legally abandoned must be provided. *II-G and Appendix K, MCSR; Uniform Standards for Final Subdivision Plats (8.94.30003, ARM); 76-3-504 and 76-3-608, MCA*

5. Future modification of any elements shown on the plat may not be made without County review and approval. *IV-A.14 and 19, MCSR 9/2006; Section 27-30-101, MCA*
6. Prior to final plat approval, proposed road names shall be submitted to and approved by Madison County Planning. *IV-A 9 (k-2) MCSR 9/2006; 76-3-608 MCA*
7. Prior to final plat approval, temporary physical addresses must be assigned to each lot in accordance with Madison County's rural addressing and Emergency 911 system. *IV-A 9 (k-2) MCSR 9/2006; 76-3-608 MCA*
8. Upon completion of road improvements, a permanent address shall be assigned to each building site. Individual address signs shall be erected at the driveway entrances as part of the required road improvements. *IV-A 9 (k-2) MCSR 9/2006; 76-3-608 MCA*
9. The final plat shall include a statement whereby lot owners waive their right to protest any rural improvement district (RID) designated by the Madison County to protect public health and safety on public roads leading to the subdivision. *IV-A 9 (a)–(h) MCSR 9/2006; 76-3-608 MCA*
10. The final plat shall include the following statement: "Prior to any construction requiring sanitation, the lot owner must first obtain a Madison County septic permit." *IV-A 16 MCSR; Madison County Sanitarian Regulations; 76-3-608 MCA*
11. In the event that the road, utilities, fire or other required improvements are not completed prior to final plat submission, a Subdivision Improvements Agreement and irrevocable Letter of Credit or equivalent guarantee shall be filed with the Board of County Commissioners prior to final plat approval. The amount of the letter of credit shall be 125% of the engineer's estimated cost for the improvements. Any letter of credit or other guarantee must cover the time period needed to complete project improvements. *IV-A 14 (c-2) MCSR 9/2006; 76-3-608 MCA*

***[Site-specific conditions]***

12. Prior to final plat approval, a test well must be drilled demonstrating, to the County Sanitarian's satisfaction, the adequacy of the water supply. The County Sanitarian (or Montana Department of Environmental Quality) must approve the project for water, sewer, and solid waste. The Sanitarian (or MT DEQ) must also approve the project for stormwater drainage either prior to final plat approval, or prior to acceptance of a Subdivision Improvements Agreement by Madison County. Well and drainfield locations shall be permanently staked. *IV-A 16 and Appenidx K, MCSR ; Sections 76-3-608 and 76-4-104, MCA.*
13. Prior to final plat approval, the Madison County Road Supervisor shall issue an encroachment permit for any access points onto Bear Creek Loop. *Madison County Ordinance 3-80, Appendix X, MCSR; Sections 76-3-504, 76-3-608, MCA.*
14. Prior to final plat approval, public access roads shall be built in the 60' access and utility easements and the 40' access and utility easement serving Lot 4. The roadways within the 60' easements shall be built in accordance with the standards set in Table IV-1, MCSR.

The roadway built in the 40' access and utility easement shall meet the standards specified for emergency access roads in Table IV-2, MCSR. Reseeding of disturbed areas must occur. The required 404 and 310 permits must be obtained prior to beginning construction on the bridge. The face of the plat shall include a statement to the effect that all road maintenance, including but not limited to grading and snowplowing and removal, shall be the responsibility of the landowners, not Madison County. *IV-A 9-10, MCSR; Section 76-3-608, MCA*

15. Prior to final plat approval, a 30,000 gallon water storage facility for fire suppression shall be installed as recommended by and in accordance with Madison Valley RFD specifications. A 10,000 gallon cistern would be acceptable if fire suppression sprinkler systems are utilized in the dwellings constructed in this subdivision. Any culverts and bridges installed to serve this subdivision must have the capacity to handle fully loaded fire apparatus. *IV-A 14(c), MCSR; Section 76-3-608, MCA*
16. The final plat shall include a statement acknowledging Madison County's right to use the property for snow-berming, used to keep the county road from drifting shut in winter weather. *IV-A 12, MCSR; Section 76-3-608, MCA.*
17. Each lot shall have a designated five-acre building envelope where structures or improvements may be made outside of the "no-build" areas that include the archeologically designated sites and the stream buffer. The face of the plat shall reference the requirement that a building envelope plan must be submitted to the Madison County Planning Office for review and approval prior to constructing any structures or improvements on a lot. *II-E 2 and IV-A 6, MCSR; Section 76-3-608 MCA.*
18. The final plat shall show a 150-foot building setback line / stream buffer from the centerline of Bear Creek designated as a "no-build" area. *IV-A 3 and IV-B 1, MCSR; Section 76-3-608 MCA.*
19. Where not already required as a condition, the covenants and/or deed restrictions shall include the provisions listed in Item 1(b) of the Settlement Agreement between William Ramsay and Marc Lenart ("Plaintiffs"); SBC Investments, LLC, Phillip Troy White, Arthur P. Hoffart and Rocky V. Hermanson ("SBC"); Peggy Kaatz in her official capacity as the Madison County Clerk and Recorder ("Kaatz"); and the Board of Commissioners of Madison County in their official capacity and Madison County (collectively the "County"). *II-E 2, MCSR; Section 76-3-608 MCA.*

"Note to Subdivider": An alternate access to Lot 4 from the south to replace the access drive and bridge crossing from the north is preferred, provided that there is a recorded easement agreement, it is acceptable to the Madison Valley Rural Fire District, the bridge has the capacity to handle fully loaded fire apparatus, and the access road meets Madison County road standards.

## **VIII. Old Business**

### **A. Streamside Protection Regulations (Status Report)**

J. Jarvis referred planning board members to two status reports outlining recent activities of the Streamside Protection Steering Committee (SPSC). The SPSC met on two occasions, July 31<sup>st</sup> and August 21, 2008 to take public comment, evaluate scientific data, and recommend amendments to the proposed streamside protection ordinance. The first meeting focused primarily on a general discussion of the proposed setbacks, distances involved, supporting science,



previous public comment, and different approaches used in other communities and counties. The distinction between a fixed and performance based setback regulations was discussed. The SPSC is interested in exploring the merits of the performance-based approach, specifically to protect a riparian vegetative buffer. The second SPSC meeting focused on the proposed planning area and a petition to exclude the S. Boulder River area. An estimation of the number of impacted lots, ranging from approximately 700 lots to 2000 lots, was presented to the SPSC. The request to exclude the SBR area was supported by the SPSC, citing confused language in the ordinance.

Planning Board members asked several questions, including:

- the number of undeveloped lots within the total estimated number.  
*Staff is compiling this information*
- the level of public participation in the SPSC discussion.  
*Meeting attendance is still high. The audience is predominately composed of concerned, impacted property owners. A public comment period is provided at each meeting.*
- the number of impacted lots and the amount of acreage involved.  
*Staff is compiling this information*
- the estimated timeline for the project. *unknown*

#### B. Planning Assistant

Charity gave an update on the position. Leona Stredwick has accepted the position. Several planning board members were involved in the interviews. Charity was very pleased with the caliber of the applicants. Leona will be starting in a few weeks, allowing time for relocation.

#### C. Annual Report (Revisited)

An updated report, with a revised number of subdivision lots created in FY 2007-08, was reviewed and accepted by the planning board.

#### D. Other

### IX. New Business

#### A. Planning Board Member Reports

Pat Bradley proposed submitting a letter to the Commissioners relating to the original Bear Creek Subdivision. The letter would state to the effect, the planning boards takes issue with the Commissioners misstatement of their findings relating to the wildlife impacts of this subdivision. Planning board members generally supported sending the letter.

Dave Maddison suggested the planning staff compile a “basic” overall development map for the County showing environmentally sensitive, or development challenged areas. This map would be useful as an “upfront” educational tool presented to developers early on in the review process to minimize conflicts that may arise later on. Planning board members expressed support for this “proactive” approach.

Laurie Schmidt encouraged the planning staff to explore ways of strengthening the enforcement of covenants through direct county involvement. Charity explained how “plat covenants” could provide a mechanism for county involvement. Laurie supported the creation of “standard plat covenants” to address areas of greatest concern to the County.

B. Geology Field Trip – Upper Ruby

The schedule for the next field trip was discussed. Planning board members agreed the best date was October 9, 2008.

C. Western Planner Conference Report

Jim gave an overview of his attendance at this conference and thanked the planning department for providing this opportunity.

D. Subdivision Regulation

Charity asked for planning board recommendations for changes or updates to the subdivision regulations. D. Maddison inquired about specifications for bridge construction and emergency vehicle usage.

E. MAP Conference

Charity mentioned she would be attending this conference in the Flathead on Sept 22-24, 2008. Ann asked if any planning board members wished to attend. No takers. Charity mentioned a one day conference on sprawl coming to Big Sky in the near future and asked if anyone was interested in attending.

F. Planning Office Report

Charity directed the planning board to a summary report in their packets.

G. Other

Ann inquired about the schedule for future planning board agendas. Charity gave a brief overview of projects in the works, including Rancho Vista Verde.

Kathy Looney mentioned that Richard Lessner with the Madison River Foundation offered to give a presentation to the planning board regarding the Foundation's activities. .

X. **Adjournment**

The meeting was adjourned at 8:18 p.m.

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**Ann Schwend, President**

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**Jim Jarvis, Acting Secretary**